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Attorney for Plaintiff: Meryl Pomponio

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

MERYL POMPONIO,

Plaintiff,

v.

RADC ENTERPRISES, INC., as an entity and
doing business as “Shell”, **HUMBURG**
INVESTMENTS, LLC, and **DOES** 1-50,
Inclusive,

Defendants.

Case No.:

**COMPLAINT BY MERYL POMPONIO
AGAINST RADC ENTERPRISES, INC., *et al.*,
FOR DAMAGES AND INJUNCTIVE RELIEF
RESULTING FROM VIOLATIONS OF 1)
TITLE III OF THE AMERICANS WITH
DISABILITIES ACT OF 1990; 2) THE UNRUH
CIVIL RIGHTS ACT; and 3) THE
CALIFORNIA DISABLED PERSONS ACT.**

[42 U.S.C. §§ 12101-12213; Cal. Civ. Code §§ 51,
52, 54, 54.1, 54.2 and 54.3.]

Comes now the Plaintiff, MERYL POMPONIO, (hereafter, “Mrs. Pomponio” or “Plaintiff”) through her Attorney, DANIEL MALAKAUSKAS, 7345 South Durango Drive, Suite B-107-240, Las Vegas, NV 89113; Telephone: (866) 790-2242; Facsimile: (888) 802-2440; who, having been denied her civil rights, hereby respectfully alleges, avers, and complains as follows:

THIS COURT CAN GRANT JUSTICE TO A DISABLED INDIVIDUAL

1 1. Mrs. Pomponio was disabled by her extreme medical condition: 1) Paraneoplastic
2 Syndrome. Due to Mrs. Pomponio's medical condition, Mrs. Pomponio is unable to walk and is
3 confined to using a mobility device to complete her day to day activities.

4
5 2. On three separate occasions in the latter half of 2019, Mrs. Pomponio was denied the full
6 and equal access to a public accommodation located at 3188 Danville Boulevard, Alamo, CA 94507.

7 3. Mrs. Pomponio now asks that this Court stand up for her rights under the Americans
8 with Disabilities Act ("ADA"), the Unruh Civil Rights Act ("UCRA") and the California Disabled
9 Persons Act ("CDPA").
10

11 **THE UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA,**
12 **OAKLAND DIVISION, HAS JURISDICTION AND IS THE PROPER VENUE FOR**
13 **PLAINTIFF TO SEEK JUSTICE**

14 4. The United States District Court has original federal question jurisdiction over this action
15 pursuant to 28 U.S.C. § 1331 and § 1343(a)(3) and (a)(4), for violations of the Americans with
16 Disabilities Act, 42 U.S.C. §§ 12101, *et seq.* This Court has supplemental jurisdiction over all state
17 claims, including, but not limited to, claims under the Unruh Civil Rights Act, Cal. Civ. Code § 51, *et*
18 *seq.*, and/or the California Disabled Persons Act, Cal. Civ. Code §§ 54-55.3, pursuant to 28 U.S.C. §
19 1367 as such acts not only expressly incorporate the Americans with Disabilities Act, but such state
20 law claims also arose from the same nucleus of operative facts or transactions.

21
22 5. Venue in this Court is proper under 28 U.S.C. § 1391(b)(2) as the claims alleged herein
23 arose in the Northern District, specifically at the real property located at 3188 Danville Boulevard,
24 Alamo, CA 94507.

25
26 6. The Oakland Division of the Northern District of California, is the proper division
27 because all claims herein arose at the real property located at 3188 Danville Boulevard, Alamo, CA
28 94507.

THE VICTIM AND THOSE RESPONSIBLE

7. Mrs. Pomponio was disabled by her extreme medical condition: 1) Paraneoplastic Syndrome. Due to Mrs. Pomponio's medical condition, Mrs. Pomponio is unable to walk and is confined to using a mobility device to complete her day to day activities. Mrs. Pomponio is therefore a "person with a disability" and a "physically disabled person" and has a "disability" or "medical condition" pursuant to the rules and regulations of the ADA, specifically 42 U.S.C § 12102 and Cal. Civ. Code §§ 51 and 54.

8. Defendants, RADC ENTERPRISES, INC., and Does 1-50 (hereafter, collectively or individually, "Tenant"), operate as a business establishment, hold themselves out to the public, and do business as "Shell" at 3188 Danville Boulevard, Alamo, CA 94507, and have substantial control over the interior and exterior of the building, the parking lot, and all spaces adjacent to such building.

9. Defendants, HUMBURG INVESTMENTS, LLC, and Does 1-50 (hereafter, collectively or individually, "Landlord", in their commercial real estate investment, owner, or landlord capacity), own, operate, manage, and have substantial control over the real property, including the interior and exterior of the building, parking lot and all spaces adjacent to the buildings located at 3188 Danville Boulevard, Alamo, CA 94507.

10. Defendants, Does 26-50, are individuals, businesses, organizations, or entities which entered into a contract with Defendants, Tenant, Landlord, and/or Does 1-50, as property managers or franchisees for the real property and adjacent parking lot, and as such have substantial control over the real property located at 3188 Danville Boulevard, Alamo, CA 94507.

11. The true names and capacities of the Defendants named herein as Does 1-50, inclusive, whether individual, corporate, partnership, association, or otherwise, are unknown to Plaintiff who

1 therefore sues these Defendants by such fictitious names. Plaintiff requests leave of court to amend this
 2 complaint to allege their true names and capacities at such times as they are ascertained.

3 12. Plaintiff is informed and believes and thereon alleges that each of the Defendants,
 4 including Does 1-50, caused and are responsible for the below described unlawful conduct and
 5 resulting injuries by, among other things, personally participating in the unlawful conduct or acting
 6 jointly or conspiring with others who did so; by authorizing, acquiescing in or setting in motion
 7 policies, plans or actions that led to the unlawful conduct; by failing to take action to prevent the
 8 unlawful conduct; by failing and refusing with deliberate indifference to Plaintiff's rights to equal
 9 access to public spaces; and by ratifying the unlawful conduct that occurred by agents, and officers or
 10 entities under their direction and control.
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 12

13
 14 **MRS. POMPONIO WAS DENIED EQUAL ACCESS TO A**
 15 **PUBLIC ACCOMMODATION AND NOW FIGHTS FOR ALL DISABLED**

16 13. Mrs. Pomponio was disabled by her extreme medical condition: 1) Paraneoplastic
 17 Syndrome. Due to Mrs. Pomponio's medical condition, Mrs. Pomponio is unable to walk and is
 18 confined to using a mobility device to complete her day to day. Mrs. Pomponio is therefore a "person
 19 with a disability" and a "disabled person" and has a "disability" or "medical condition" pursuant to
 20 federal law, rules and regulations, specifically 42 U.S.C § 12102, and 28 C.F.R. § 36.104.
 21

22 14. On three separate occasions in the latter half of 2019, Mrs. Pomponio desired to go to
 23 and use the services, and/or buy products at "Shell" which is located at 3188 Danville Boulevard,
 24 Alamo, CA 94507.

25 15. While in the parking lot adjacent to, surrounding, or while inside the business "Shell",
 26 Mrs. Pomponio personally encountered barriers that interfered with her ability to use and enjoy the
 27 goods, services, privileges and accommodations offered by the facilities. Specifically, while visiting
 28

1 the business establishment, Mrs. Pomponio had difficulty as the alleged accessible parking stall and
2 access aisle had improper slopes making it more difficult for her to use her wheeled mobility device.
3 In addition, the entrance door was heavy and difficult to open while seated in her wheeled mobility
4 device. Finally, not only were the aisles inside the store too narrow making it more difficult for Mrs.
5 Pomponio to navigate in her wheeled mobility device but the service counter was too high which made
6 it difficult for her to reach from her seated position in her wheeled mobility device.
7

8 16. Despite Mrs. Pomponio's wish to patronize the businesses in the future, the above-
9 mentioned barriers constitute deterrents to access to the business, rendering the business' goods,
10 services, facilities, privileges, advantages, and accommodations unavailable to physically disabled
11 patrons such as herself.
12

13 17. Mrs. Pomponio alleges, on information and belief, that Defendants knew that such
14 barriers existed and that Defendants' failure to remove the barriers was intentional as the particular
15 barriers mentioned above were intuitive and obvious. Additionally, Defendants exercised control and
16 dominion over the condition of the real property and building and had the financial resources to remove
17 such barriers. Furthermore, Mrs. Pomponio alleges, on information and belief, that such modifications
18 were readily achievable as removal of the above barriers could have been achieved without much
19 difficulty or expense.
20

21 18. Mrs. Pomponio brings this lawsuit to encourage Defendants to ensure their property is
22 accessible to all.
23

24
25 **FIRST CLAIM**
26 **VIOLATION OF TITLE III OF THE ADA**
(As to all Defendants)

27 19. Plaintiff hereby incorporates and realleges, as if fully set forth herein, each and every
28 allegation contained in all prior and subsequent paragraphs.

1 20. The parking lot and building at the real property known as 3188 Danville Boulevard,
2 Alamo, CA 94507 is owned, controlled, operated, leased, and managed by Defendants: Tenant,
3 Landlord, Does 1-50, or their agents. The business “Shell”, including their parking lot, are open to the
4 general public and as such is a “public accommodation” under 42 U.S.C. § 12181 and 28 C.F.R. §
5 36.104.
6

7 21. Pursuant to 42 U.S.C. § 12182(a), by owning, leasing, or operating the public
8 accommodation known as “Shell”, Defendants are prohibited from discriminating against Plaintiff by
9 denying her, on the basis of her disability, the full and equal enjoyment of the goods, services, facilities,
10 privileges, advantages, or accommodations offered by the facilities.
11

12 22. In order to avoid discriminating against a disabled individual pursuant to 28 C.F.R. §
13 36.101 and § 36.102, Defendants must ensure that such public accommodation is designed, constructed,
14 and altered in compliance with the accessibility standards established by 28 C.F.R. § 36.101 *et seq.*,
15 and have proper policies, practices, and procedures to ensure that individuals with disabilities are
16 afforded equal access to the full and equal enjoyment of the goods, services, facilities, privileges,
17 advantages, or accommodations offered by the public accommodation. 42 U.S.C. §§ 12181(9),
18 12182(b)(2)(A)(iv) and (v), 12183(a)(1) and (2).
19

20 23. Mrs. Pomponio was disabled by her extreme medical condition: 1) Paraneoplastic
21 Syndrome. Due to Mrs. Pomponio’s medical condition, Mrs. Pomponio is unable to walk and is
22 confined to using a mobility device to complete her day to day. Mrs. Pomponio is therefore a “person
23 with a disability” and a “disabled person” and has a “disability” or “medical condition” pursuant to
24 federal law, rules and regulations, specifically 42 U.S.C § 12102, and 28 C.F.R. § 36.104. While at
25 the interior, exterior, parking lot, or adjacent spaces, of the business known as “Shell”, Plaintiff
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1 personally encountered a number of barriers that interfered with her ability, to use and enjoy the goods,
 2 services, privileges and accommodations offered at the facility.

3 24. Specifically, Defendants failed to ensure that such real property was equally accessible
 4 to individuals with disabilities and medical conditions by having the following barriers at the real
 5 property:
 6

- 7 a. There is no unauthorized vehicle parking signage at each driveway entrance to the off-
 8 street parking, or immediately adjacent to on-site accessible parking and visible from
 9 each parking space, in violation of 2013 CBC 11B-502.8 and 2016 CBC 11B-502.8;
 10
- 11 b. The alleged accessible parking space(s) and access aisle(s)' slope(s) exceed two
 12 percent (2%) in violation of 1991 ADAAG 4.6.3, 2010 ADAS 502.4 Exception, 2013
 13 CBC 11B-502.4 Exception and 2016 CBC 11B-502.4 Exception;
- 14 c. One or more of the alleged accessible parking spaces fail to have "VAN
 15 ACCESSIBLE" identification signage in violation of 1991 ADAAG 4.6.1, 2010
 16 ADAS 502.6, 2013 CBC 11B502.6, 2016 CBC 11B-502.6;
- 17 d. One or more of the alleged accessible parking spaces fail to have "MINIMUM FINE
 18 \$250" identification signage in violation of 2013 CBC 11B-502.6.2, 2016 CBC 11B-
 19 502.6.2;
 20
- 21 e. The required accessible parking space identification signage is not provided at one or
 22 more of the alleged accessible parking stalls in violation of 1991 ADAAG 4.6.4, 2010
 23 ADAS 502.6, 2013 CBC 11B-502.6 and 2016 CBC 11B-502.6;
- 24 f. One or more of the alleged parking space's access aisles are not marked with a blue
 25 borderline in violation of 2013 CBC 11B502.3.3 and 2016 CBC 11B-502.3.3;
 26
 27
 28

- 1 g. One or more of the alleged accessible parking spaces' access aisles is not marked with
2 the statement "NO PARKING" in letters that are at least twelve inches (12") in height
3 in violation of 2010 ADAS 502.3.3, 2013 CBC 11B 502.3.3 and 2016 CBC 11B-
4 502.3.3;
5
6 h. There are no accessible routes provided within the site from accessible parking spaces
7 and accessible passenger loading zones, public streets and sidewalks, and public
8 transportation stops to the accessible building or facility entrance they serve in
9 violation of 1991 ADAAG 4.3.2(1), 2010 ADAS 206.2.1, 2013 CBC 11B-206.2.1 and
10 2016 CBC 11B-206.2.1;
11
12 i. The alleged accessible entrance door(s) requires more than five pounds (5 lbs.) of force
13 to push or pull open in violation of 2013 CBC 11B-404.2.9 and 2016 CBC 11B-
14 404.2.9;
15
16 j. The clear width of circulation aisles are less than thirty-six inches (36") in violation of
17 1991 ADAAG 4.2.1, 2010 ADA Standards 403.5.1, 2013 CBC 11B403.5.1 and 2016
18 CBC 11B-403.5.1;
19
20 k. The sales and, or, service counter, fails to be at least thirty-six (36") inches long despite
21 requiring a parallel approach in violation of 1991 ADAAG 7.2., 2010 ADAS 904.4.1,
22 2013 CBC 11B-904.4.1, and 2016 CBC 11B-904.4.1.;
23
24 l. The entry door closes too fast in violation of CBC Section 11B-404.2.8.1 and ADA
25 Section 404.2.8.1;
26
27 m. The aisles serving off both sides are less than forty-four inches (44") wide in violation
28 of CBC Section 11B-403.5.1 Exception 4.

1 25. As a direct and proximate cause of Defendants' conduct, Plaintiff, on the basis of her
2 disabilities, was denied the opportunity to participate in or benefit from a good, service, privilege,
3 individuals in violation of 42 U.S.C. § 12181.

4
5 26. Plaintiff seeks injunctive relief to prohibit Defendants' acts and omissions as complained
6 of herein which have the effect of wrongfully discriminating against Plaintiff and other members of the
7 public who are physically disabled from full and equal access to these public facilities. Specifically,
8 Plaintiff seeks injunctive relief ensuring that Defendants modify their real property to ensure that
9 disabled persons are not discriminated against in receiving equal access to goods, services, and facilities
10 as other more able-bodied persons.

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13 **SECOND CLAIM**
14 **VIOLATIONS OF CALIFORNIA CIVIL CODE § 51**
 (As to all Defendants)

15 27. Plaintiff hereby incorporates and realleges, as if fully set forth herein, each and every
16 allegation contained in all prior and subsequent paragraphs.

17 28. Any violation of the ADA 42 U.S.C. §§ 12101-12213 also constitutes a violation of Cal.
18 Civ. Code § 51(f) and § 52(a), thus independently justifying an award of damages and injunctive relief
19 pursuant to California law.

20
21 29. On the basis of her disabilities, Plaintiff was denied the opportunity to participate in or
22 benefit from a good, service, privilege, advantage or accommodation in a manner equal to that afforded
23 to other non-disabled individuals which resulted in Plaintiff's difficulty, discomfort, or embarrassment.
24 Therefore, pursuant to Cal. Civ. Code § 55.56(a) through (c), Plaintiff is entitled to attorneys' fees,
25 costs, and damages of no less than four-thousand U.S. dollars (4,000 USD) for each and every violation.
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**THIRD CLAIM
VIOLATIONS OF CALIFORNIA CIVIL CODE § 54
(As to all Defendants)**

30. Plaintiff hereby incorporates and realleges, as if fully set forth herein, each and every allegation contained in all prior and subsequent paragraphs.

31. Any violation of the ADA 42 U.S.C. §§ 12101-12213 also constitutes a violation of Cal. Civ. Code § 54.1(d) and § 54.3(a), thus independently justifying an award of damages and injunctive relief pursuant to California law.

32. On the basis of her disabilities, Plaintiff was denied the opportunity to participate in or benefit from a good, service, privilege, advantage or accommodation in a manner equal to that afforded to other non-disabled individuals, which resulted in Plaintiff's difficulty, discomfort or embarrassment. Therefore, pursuant to Cal. Civ. Code § 55.56(a) through (c), Plaintiff is entitled to attorneys' fees, costs, and damages on no less than one-thousand U.S. dollars (1,000 USD) for each and every violation.

PRAYER

WHEREFORE, Plaintiff prays the following:

1. For injunctive relief pursuant to 28 C.F.R. § 36.501 directing Defendants to modify their facilities and policies as required by law to comply with ADA regulations, including the ADAAG where required; institute policy to enable Plaintiff to use goods and services offered to the non-disabled public; provide adequate access to all citizens, including persons with disabilities; issue a permanent injunction directing Defendants to maintain their facilities usable by Plaintiff and similarly situated person with disabilities in compliance with federal regulations, and which provide full and equal access, as required by law;

3. Award Plaintiff all appropriate damages, including, but not limited to, either statutory damages of no less than four-thousand U.S. dollars (4,000 USD) for each and every violation of Cal. Civ. Code § 51, or no less than one-thousand U.S. dollars (1,000 USD) for each and every violation of Cal. Civ. Code § 54, with either Cal. Civ. Code § 51 or § 54 being elected prior to, or at, trial, but not both, and general damages in an amount within the jurisdiction of the Court, according to proof;

5. Grant such other and further relief as this Court may deem just and proper.

/s/ Daniel Malakauskas
By: DANIEL MALAKAUSKAS, of,
MALAKAUSKAS LAW, APC,
Attorney for PLAINTIFF